(1)

92-1166

No. _____



IN THE SUPREME COURT OF THE UNITED STATES

JANUARY TERM, 1992

WALDEMAR RATZLAF and
LORETTA RATZLAF,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

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# PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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## QUESTIONS PRESENTED

1. Whether knowledge of the legality of one's actions is an element of the criminal offense of structuring cash transactions in violation of 31 U.S.C. § 5324(3)?

2. Does this court's decision in Cheek v. United States, ___ U.S. ___, 111 S. Ct. 604, 112 L.Ed. 2d 617 (U.S. 111, June 8, 1991), apply to the structuring statute promulgated in 31 U.S.C. § 5324?

## PARTIES

1. United States of America.
2. Waldemar Ratzlaf.
3. Loretta Ratzlaf.

All of the parties to this proceeding are named in the caption. Waldemar and Loretta Ratzlaf (Petitioners) were defendants in the District Court and appellants in the Court of Appeals. No party is a corporation requiring a listing of affiliates pursuant to Rule 29.1.



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# PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Petitioners, Loretta Ratzlaf and Waldemar Ratzlaf, respectfully pray that a writ of certiorari be issued to review the order and judgment of the United States Court of Appeals for the Ninth Circuit issued on October 6, 1992.

## OPINION BELOW

A copy of the opinion issued by the United States Court of Appeals for the Ninth Circuit in the case of United States v. Ratzlaf, 976 F.2d 1280 (9th Cir. 1992), is attached as Appendix A.

## JURISDICTION

On October 6, 1992, the United States Court of Appeals for the Ninth Circuit entered its order and judgment affirming the judgment of the United



States District Court for the District of Nevada.

This court has jurisdiction to review by certiorari the decision of the Court of Appeals pursuant to 28 U.S.C. § 1254(1).

## STATUTORY PROVISIONS INVOLVED

Title 31 U.S.C. § 5313 provides that:

> (a) When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the secretary or treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the secretary prescribes by regulation, the institution and any other participant in the transaction the secretary may prescribe shall file a report on the transaction at the time and in the way the secretary prescribes. A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made.

(b) The Secretary may designate a domestic financial institution as an agent of the United States Government to receive a report under this section. However, the Secretary may designate a domestic financial institution that is not insured, chartered, examined, or registered as a domestic financial institution only if the institution consents. The Secretary may suspend or revoke a designation for a violation of this subchapter or a regulation under this subchapter (except a violation of section 3515 of this title or a regulation prescribed under section 5315), section 411 of the National Housing Act (12 U.S.C. 1730d), or section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b).

(c)(1) A person (except a domestic financial institution designated under subsection (b) of this section) required to file a report under this section shall file the report --

(A) with the institution involved in the transaction if the institution was designated;

(B) in the way the Secretary prescribes when the institution was not designated; or

(C) with the Secretary.



(2) The Secretary shall prescribe --

(A) the filing procedure for a domestic financial institution designated under subsection (b) of this section; and

(B) the way the institution shall submit reports filed with it.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 996.)

Title 31 U.S.C. § 5322 provides that:

(a) A person willfully violating this subsection or a regulation prescribed under this subsection (except section 5315 of this title or a regulations prescribed under section 5315) shall be fined not less than $250,000.00, or imprisonment [sic] not more than five years, or both.

(b) A person willfully violating this subchapter or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed under section 5315), while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period, shall be fined not more than

$500,000, imprisoned for not more than 10 years, or both.

(c) For a violation of section 5318(a)(2) of this title or regulation prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.

(As amended Pub.L. 98-473, Title II, § 901(b), Oct. 12, 1984, 98 Stat. 2135; Pub.L. 99-570, Title I, §§ 1356(c)(1), 1357(g), Oct. 27, 1986, 100 Stat. 3207-24, 3207-26.)

Title 31 U.S.C. § 5324 provides that:

No person shall for the purpose of avoiding the reporting requirements of section 5313(a) with respect to such transaction --

(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a);

(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) that contains a material omission or misstatement of fact; or



(3) structure or assist in structuring or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

(Added Pub.L. 99-570, Title I, § 1354(a), Oct. 27, 1986, 100 Stat. 3207-22.)

## STATEMENT OF THE CASE

On November 20, 1990, a Nevada Grand Jury returned a six count indictment which charged Waldemar Ratzlaf, Loretta Ratzlaf and Ron Hunt, Defendants, with:

1. Conspiracy in violation of 18 U.S.C. 371 (count 1).

2. Structuring of financial transactions to avoid currency reporting requirements, in violation of 31 U.S.C. 5324(3) and 31 U.S.C. 5322(a), (counts 2, 3, 4 and 5); and

3. Interstate travel in aid of racketeering in violation of 18 U.S.C. 1952(a)(3), (count 6).

On April 24, 1991, following a lengthy trial, the jury returned a guilty verdict against Waldemar Ratzlaf on all counts. The jury found Loretta Ratzlaf guilty on counts 1 and 6, conspiracy, in violation of 18 U.S.C. § 371 and interstate travel in aid of racketeering in violation of 18 U.S.C. § 1952(a)(3), respectively. Loretta Ratzlaf was found innocent on the four substantive counts of structuring financial transactions to avoid currency reporting requirements. Mr. Hunt was found not guilty on all counts.[1]

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[1]The Ninth Circuit Court of Appeals in their opinion stated in a footnote that Mr. Hunt was convicted on the conspiracy count, two structuring counts, and the interstate travel



On July 8, 1991, sentencing proceedings were held before the Honorable Edward C. Reed, Jr. United States District Judge. Mr. and Mrs. Ratzlaf's cases were consolidated for appeal on November 26, 1991. Petitioners filed their brief in support of appeal on December 20, 1991. Petitioners argued that this court's decision in Cheek v. United States, ___ US ___, 111 S.Ct 604, 112 L.Ed 2d 617 (1991), effectively overruled the Ninth Circuit Court of Appeal's holding in United States v. Hoyland, 914 F.2d 1125 (9th Cir. 1990). Petitioners also argued that knowledge of wrong doing was

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charge. This is inaccurate. Mr. Hunt was found innocent on all counts and does not join in this Petition for Writ of Certiorari.

a requirement under 31 U.S.C. §§ 5324 and 5322.

## FACTUAL BACKGROUND

During the criminal tax investigation of Petitioners arising from an income tax audit, their representative and accountant delivered the evidence, which consisted of cashier check stubs and carbon copies, to the IRS. Petitioners did this because they believed they had done nothing wrong with regard to those transactions. Then and only then did the government begin to investigate the events which occurred on October 26 through October 28, 1988.

On October 26, 1988, Petitioners traveled to Nevada in order to pay off a $160,000 gambling marker. In the course of paying their gambling debt, Petitioners purchased eight cashiers



checks from five different banks. It was these transactions which gave rise to the indictments and conviction of Petitioners.

It was undisputed at trial that Petitioner Waldemar Ratzlaf knew banks were required to file something and that Petitioners engaged in transactions in a way as to prevent the banks from filing CTR. The Petitioners, however, asserted as a defense the fact that they did not know their actions were illegal. To rebut Petitioners' defense, the government argued that Petitioners' knowledge of the illegality of their actions was irrelevant. There was no evidence that the monies used to purchase the cashiers checks involved in this case was money obtained illegally or through an illegal source. In fact,

the evidence presented reflects the money came from legally sanctioned gambling in Nevada.

The instructions given to the jury, however, rendered Petitioners' lack of knowledge, with respect to the criminality of their actions, irrelevant. The instructions also made irrelevant the fact that the money used to purchase the cashiers checks was not obtained through criminal activities.

The facts of this case do not give rise to a situation in which the legislators of 31 U.S.C. § 5324 intended, would result in a conviction for structuring. However, due to the present state of the structuring laws, established in United States v. Scanio, 900 F.2d 485 (2nd Cir. 1990); and Hoyland, supra. Petitioners' actions



resulted in their conviction. This was the result despite the fact that there was no underlying illegality attached to Petitioners actions and that the court make it unnecessary to show Petitioners knew their actions were prohibited. Therefore, armed with a favorable jury instruction based on the decision of Scanio, supra, and Hoyland, supra, the prosecutor's task in obtaining a conviction against Petitioners was as the court in United States v. Aversa, 762 F.Supp. 441 (D.N.H. 1991) found, no more difficult than "shooting fish in a barrel." It is for this reason that the Petitioners' request that this court grant its Petition for Writ of Certiorari.

**PETITIONERS' REQUEST THE CONSIDERATION OF THIS PETITION FOR WRIT OF CERTIORARI BE DEFERRED**

To date, all circuits that have addressed the question of whether the term "willfully," as used in 31 U.S.C. § 5322(a) and applied to 31 U.S.C. § 5324(3), requires the government to prove knowledge on the part of a defendant have found such a showing unnecessary. Scanio, supra; Hoyland, supra; United States v. Dashney, 937 F.2d 532 (10th Cir.), cert. denied, 112 S.Ct. 402 (1991); United States v. Brown, 954 F.2d 1563 (11th Cir. 1992); United States v. Rogers, 962 F.2d 342 (4th Cir. 1992). (Petitioners will refer to the Scanio, supra, case for the proposition put forth in the above cited cases, that knowledge of the crime of structuring is not an element of



structuring); but see, Cf. United States v. Sturman, 951 F.2d 1466 (6th Cir. 1991).

The First Circuit in United States v. Donovan, ___ F.2d ___, 1992 WL 18217 (1st Cir. (N.H.)), 60 USLW 2530 (1992), followed the rationale of the Scanio case. Following that decision, however, the First Circuit granted a petition to re-hear en banc the Donovan case. In granting the petition, the court withdrew the panel opinion and judgment of the appellate court. The First Circuit consolidated with Donovan the cases of Aversa, supra, and United States v. Mento, 762 F.Supp. 441 (D.N.H. 1991). The en banc re-hearing was granted to determine the meaning of the term "willfully" as that term is used in 31 U.S.C. § 5322 and, by derivation

therefrom, as that term applied to (1) violations of the Domestic Currency Transaction Reporting Law, 31 U.S.C. § 5313, and (2) violation of the Anti Structuring Law, 31 U.S.C. § 5324. The argument was heard in September of 1992. No decision has been rendered.

Petitioners requested additional time to file their petition for certiorari until the First Circuit rendered its opinion in Donovan. Petitioners' motion for extension of time was filed on December 23, 1992. The motion had not been ruled as of the filing of this petition. Petitioners, therefore, respectfully request that this court defer the consideration of the petition until such time as the First Circuit renders an opinion in the Donovan, Aversa, and Mento case.



On occasion, it is proper for this court to delay its granting of certiorari. See, e.g. Keney v. New York, 388 US 440 (1967).

## REASONS FOR GRANTING CERTIORARI

### 1. Granting of Petitioners' Writ of Certiorari is Proper in This Case, So That This Court's Holding in Cheek Can Be Clarified.

Petitioners' interpretation of the term "willfully" is not only born out by the legislative history of § 5322, discussed infra, but is supported by this court's interpretation of the identical provision as it is used in criminal tax prosecutions. This court held in Cheek, supra, that "willfulness" requires the intentional violation of a known legal duty. The Cheek decision explained that the common law presumption that every person knows the law, was based on the notion that the

law is definite and knowable, but that the "proliferation of statutes and regulations has sometimes made it difficult for the average citizen to know and comprehend the extent of the duties and obligations imposed by the tax law." Id. at 609. The special treatment of criminal tax offenses by this court was largely due to the complexity of the tax laws." Id.

Petitioners, in their appeal, argued that Cheek, supra, applied to prosecutions for violations of 31 U.S.C. § 5324, and therefore, effectively overruled Scanio, supra. The Ninth Circuit disagreed, holding the Cheek decision did not apply to the structuring violations. The court based its decision on the finding that Cheek was limited to criminal tax violations.



The Ninth Circuit's holding in Petitioner's case is in conflict with this court's rationale in Cheek, thus making granting of certiorari proper.

Further, there is a split in the circuits concerning the application of the Cheek. The application of this court's decision in Cheek has been adopted in other than the criminal tax context. Sturman, supra (Cheek was applied to the law governing failure to maintain records of foreign currency transactions); Wheeler v. McKinley Enterprises, 937 F.2d 1158 (6th Cir. 1991) (holding the definition applied to violations of 29 U.S.C. § 632(a)(1), dealing with penalties for age discrimination); Aversa, supra, (the Cheek definition was applied to the same structuring statutes that Petitioners

were convicted of violating); United States v. Moran, 762 F.Supp. 441 (D.N.H. 1991) (the Cheek definition of "willfulness" was applied in a criminal copyright infringement case).

In Sturman, supra, the Sixth Circuit specifically recognized that the holding in Cheek was applicable to the "willfulness" requirements of § 5322 of Title 31. The defendant in that case was charged with violation of the foreign currency reporting requirements (§ 5314), which is located in the same subchapter of Title 31 (Chapter 53, Subchapter 11) as the structuring section involved in Petitioners' case (§ 5324). Violations of § 5314 become a criminal offense pursuant to § 5322 only when it can be shown a defendant



violated a known legal duty. The Sturman court held:

> Counts XII-XV charged Ruben Sturman with willfully failing to maintain records and file reports as required by 31 U.S.C. § 5314 (1982).... Ruben Sturman objects to his conviction on these counts because he believes the prosecution failed to show that he was aware of the form 90-22.1 filing requirements. In Cheek v. United States, ___ US ___, 111 S.Ct. 604, 610, 112 L.Ed 2d 617 (1991), the Supreme Court established that the test for statutory willfulness is 'voluntary intentional violation of a known legal duty.'

951 F.2d at 1476.

This confusion and split of authority amongst various courts, concerning the application of the Cheek decision, necessitates clarification of that decision by this court.

2. The Holding in Petitioners' Case is Inconsistent with Congressional Intent.

The present interpretation of the term "willfully" as it is used in § 5322

and applied to § 5324 is inconsistent with the Congressional intent. The legislative history supports the same interpretation of the term "willfully" as this court applied to that term in Cheek, supra. Prior to the enactment on October 27, 1986 of 31 U.S.C. § 5324, courts interpreted the word "willfully" in § 5322(a) as requiring knowledge of illegality. See, e.g., United States v. Eisenstein, 731 F.2d 1540, 1543 (11th Cir. 1984); United States v. Granda, 565 F.2d 922, 926 (5th Cir. 1978). Congress did not change the language of § 5322(a) when it enacted § 5324. Thus, unless Congress intended "willfully", as it is used in § 5322(a), to have one meaning when applied to some violations of Title 31 and another when applied to others, the willfulness provision of § 5322(a)



requires knowledge of the illegality of structuring on the part of a defendant.

The legislative history of § 5324 supports this interpretation. Section 5324 was enacted as part of the Anti-Drug Abuse Act of 1986 ("ADAA"). 100 Stat. 3207 (1986). The legislative history of the ADAA is complex. Numerous versions of the ADAA were proposed and debated by the legislature. See 1986 U.S. Code Cong. & Admin. News 5393. The final version of the ADAA has no explanation regarding its provisions. The legislative history consists of reports and hearings accompanying various bills that were not enacted into law.

Two of the reports concerning money laundering contain references to the interpretation of the term "willfully"

as used in § 5322(a). The first report was submitted by the Committee on Banking, Finance & Urban Affairs and accompanied House Bill 5176, the "Comprehensive Money Laundering Provision Act," which contained an anti-structuring provision and a provision changing the word "willfully" in § 5322(a) to "knowingly." H.R. Rep. No. 746,99TH Cong., 2nd Sess. at 1-2, 8 (1986). The report explains that the proposed change from "willfully" to "knowingly" clarifies the state of mind standard under existing law in effect for criminal penalties. Id. at 28-9. According to the report, the law existing at the time § 5324 was being considered required knowledge of illegality for criminal conviction under Title 31.

The second report was submitted by the Committee on the Judiciary and accompanied House Bill 5217, the "Money Laundering Control Act of 1986," which also contained a provision changing "willfully" to "knowingly" in § 5322(a). H.R. Rep. No. 855,99TH Cong., 2nd Sess. at 6-7 (1986). The report explained that courts have construed the word "willfully" in various ways, including as requiring that an act be done with specific intent to violate the law and as requiring that an act be done without grounds for believing it is unlawful. Id. at 21, n. 15. Despite this awareness, however, Congress chose not to change the language of § 5322(a). See 31 U.S.C. § 5322(a).

The legislative history of the structuring statute thus establishes



that Congress was aware that § 5322(a) had been interpreted to require knowledge of the illegality, and did nothing to change the statutes mens rea requirement.

Even if the reports do not affirmatively establish the Congress' intent to require knowledge of illegality, they render the legislative history ambiguous. Given this ambiguity and the ambiguity of the word "willfully," the rule of lenity requires the ambiguity be resolved in favor of Petitioners. See Bifulco v. United States, 447 US 381, 387, 400 (1980); United States v. Bass, 404 US 336, 347-48 (1971). Therefore, the term "willfulness" as used in § 5322 must be interpreted as requiring knowledge of illegality.

3. 31 U.S.C. § 5324 is in the Nature of a Criminal Tax Statute, and Therefore, This Court's Holding in Cheek is in Conflict with the Holding in Petitioners' Case.

If we assume arguendo that the court in Petitioners' case accurately held that the Cheek decision only applies in a criminal tax case, their holding is still flawed. The statute under which Petitioners were convicted is in the nature of a criminal tax statute and is equally as complex and not as well known as the tax statutes. Therefore, the holding in Cheek should be expanded and applied to the complex group of statutes which contain 31 U.S.C. §§ 5324 and 5322 and are tax related statutes.

The Cheek case dealt with a defendant who was charged with willfully failing to file an income tax return and



willfully attempting to evade his income tax in violation of 26 U.S.C. §§ 7203 and 7201. This court held with regard to the term "willful" that:

> The general rule of ignorance of the law or a mistake of law is no defense to a criminal prosecution is deeply rooted in the American legal system. Based on the notion that the law is definite and knowable, the common law presumed that every person knew the law. This common law rule has been applied by the court in numerous cases concerning the criminal statutes.
>
> The proliferation of statutes and regulations has sometimes made it difficult for the average citizen to know and comprehend the extent of the duties and obligations imposed by the tax laws. Congress has accordingly softened the impact of the common law presumption by making specific intent to violate the law an element of certain federal tax offenses. Thus, the court almost 60 years ago interpreted the statutory term "willfully" as used in the federal criminal tax statutes as carving out an exception to the traditional rule. This special treatment of the criminal tax offenses is

> largely due to the complexity of the tax laws.

Cheek, 111 S.Ct. at 609 (citations omitted).

The notion of laws becoming too complex was contemplated as early as the Federalist Papers, in which James Madison wrote:

> It will be of little avail to the people that laws are made of men of their own choice if the laws be so voluminous that they cannot be read, or so coherent that they cannot be understood; if they be repealed or reversed before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today, can guess what it will be tomorrow.

James Madison, Federalist Papers, 1788.

James Madison's conclusions could be no more applicable than to the vast number of statutes which deal with the process of exchanging and engaging in currency transactions.



The appellate court in Petitioners' case found, however, that § 5324(3) is not complex or ambiguous. As a result, the court found the rational in Cheek, as it applies to the complexity of statutes, did not apply in Petitioners' case.

The problem with the Ninth Circuit's analysis of § 5324(3) is that § 5324 is only one of the sections which make up the ADAA, which is equally as complex as the tax laws. This court in Cheek did not determine that the individual statute violated by Mr. Cheek was what was complex, but rather that the tax code was complex. In that same vein, it is not the complexity of § 5324 that is at issue, but rather the complexity of the entire ADAA.

The reasons for requiring a specific intent to violate the law in Petitioners' case, are at least as compelling as those reasons proffered by this court in Cheek. In light of the complexity of the law in the structuring array, reverting to the common law rule that ignorance of the law is no excuse would cause, and did cause, a miscarriage of justice.

It is for the above reasons Petitioners' writ or certiorari should be granted. The granting of the writ is proper so that the application of this court's holding in Cheek can be clarified and because the decision in Petitioners' case is in conflict with this court's decision in Cheek.

The proper interpretation of the word "willfully" as it is used in the

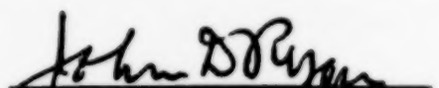


structuring statute involves an important question of federal law that has not been, but should be, settled by this court. In addition, the decision in Scanio, and the cases that follow it, conflict with this court's decision in Cheek. Those cases also conflict with the decision of the United States District Court for the District of New Hampshire. Aversa, supra. A conflict as to the application of the Cheek decision and whether it is to be strictly applied to tax cases or can be applied to other statutory schemes exists. See Sturman, supra; Wheeler, supra; Moran, supra; Aversa, supra. For these reasons, Petitioners respectfully submit that this case is appropriate for review by this court.

## CONCLUSION

For the reasons stated above, Petitioners, Waldemar Ratzlaf and Loretta Ratzlaf, respectfully request this court to grant their petition for writ of certiorari.

JOHN D. RYAN, P.C.



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APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| UNITED STATES OF AMERICA, Plaintiff-Appellee, v. WALDEMAR RATZLAF, Defendant-Appellant. | ) | No. 91-10397<br>D.C. No. CR-N-90-58-ECR<br>OPINION |
| UNITED STATES OF AMERICA, Plaintiff-Appellee, v. LORETTA RATZLAF, Defendant-Appellant. | ) | No. 91-10429<br>D.C. No. CR-N-90-58-ECR<br>OPINION |

Appeal from the United States District Court for the District of Nevada
Edward C. Reed, Jr., Chief Judge, Presiding



Argued and Submitted
July 14, 1992--San Francisco, California

Filed October 6, 1992

Before: J. Clifford Wallace, Chief Judge, and Herbert Y.C. Choy and Cecil F. Poole, Circuit Judges.

Opinion by Judge Poole

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**SUMMARY**

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**Criminal Law and Procedure/ Criminal Acts/Defenses**

Affirming district court judgments of conviction for structuring financial transactions to avoid currency reporting requirements, the court of appeals held that the recent Supreme Court decision in Cheek v. United States did not overrule the Ninth Circuit's holding in United States v. Hoyland that the government had to prove that a defendant knew such structuring was illegal to convict.

Appellants Waldemar and Loretta Ratzlaf were high-time gamblers. To facilitate their enjoyment of such activity, they established lines of credit at numerous casinos in New Jersey and Nevada. Mr. Ratzlaf, a regular customer and a "high roller" at the casinos, bet, won, and lost large amounts of money. A bad night at a Nevada casino made Mr. Ratzlaf lose $160,000. The Ratzlafs tendered payment to the casino in cash because Mr. Ratzlaf did not want the casino to fill out any report of the payment transaction. However, the casino refused to accept cash payment on those terms and informed the Ratzlafs that the casino would be required to fill out a "currency transaction report" since more than $10,000 in currency was involved.



Subsequently, the Ratzlafs obtained various cashiers checks in amounts of less than $10,000 to repay the casino debt. A federal grand jury indicted the Ratzlafs for structuring financial transactions to avoid currency reporting requirements. A jury convicted the Ratzlafs. The Ratzlafs argued that the jury instructions misstated the elements of the crime of structuring financial transactions to avoid the currency reporting requirements.

[1] The court noted that it recently rejected in Hoyland the argument that an individual cannot be convicted of "structuring" unless the government proves that he or she knew such activities were illegal. In so holding, the court agreed with the

Second Circuit's holding to that effect in Scanio. [2] The court rejected the Ratzlafs' argument that the Supreme Court's recent decision in Cheek v. United States overruled Hoyland and Scanio. [3] The court noted that other circuits have rejected the notion that Cheek changes the Hoyland and Scanio conclusions. [4] However, the court disagreed with the New Hampshire district court holding in Aversa that the defendant there could not be convicted of structuring because he did not know that it was illegal. First, the currency structuring and reporting statutes are not "complex" in the sense that the Cheek court used that term in referring to the federal tax laws. [5] Second, the court did not think the rule of lenity applies to the money



laundering statutes. Here, the language of the statute in question was not ambiguous, and even a strict reading of the statute supports, not undercuts, the government's proffered interpretation. [6] The court thus concluded that Hoyland and Scanio rest firmly upon Congress' intent in proscribing structuring. After the 1986 amendments to the statute, one could be prosecuted for violating section 5324(3) if he or she willfully structured transactions. [7] If a defendant knows that the bank must report a currency transaction and then intentionally acts in a way to prevent that, he has acted willfully.

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C. Hill, Reno, Nevada, for the defendants-appellants.

Jeffrey B. Setness and William M. Welch, Assistant United States Attorneys, Reno,Nevada, for the plaintiff,appellee.

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**OPINION**

POOLE, Circuit Judge:

Defendants Loretta and Waldemar Ratzlaf appealed their convictions for structuring financial transactions to avoid currency reporting requirements, a violation of 31 U.S.C. §§ 5322(a), 5324(3). They argue that Cheek v. United States, 111 S.Ct. 604 (1991), overrules our holding in United States v. Hoyland, 914 F.2d 1125 (9th Cir. 1990), that the government does not have to prove that the defendants knew



structuring is illegal to convict. We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm.

I

Defendants Waldemar and Loretta Ratzlaf, residents of Portland, Oregon, are gamblers. To facilitate their enjoyment of such activity, they established lines of credit at fifteen casinos of New Jersey and Nevada. Mr. Ratzlaf, a regular customer and a "high roller" at the casinos, bet, won, and lost large amounts of money. The events that led to this case began on October 20th, 1988, at the High Sierra casino in Reno, Nevada. Mr. Ratzlaf had a bad night, losing $160,00 playing blackjack. Fortunately for him, the casino had increased his credit line from $25,00 to $160,000 earlier that day. When the

casino learned about Lady Luck's unkind treatment of Mr. Ratzlaf, it granted him one week to pay back the $160,000 balance.

On October 27, 1988, the Ratzlafs returned to the High Sierra casino carrying enough cash to pay their debt. Shift manager Tony Mercurio informed his boss, casino Vice-President Stephen Allmaras, that Mr. Ratzlaf did not want the casino to fill out any written report of the payment transaction. Allmaras refused to accept cash payment on those terms and informed the Ratzlafs that he would be required to fill out a "currency transaction report" (CTR) since more than $10,000 in currency was involved. Allmaras told Mr. Ratzlaf that he would be happy to accept as an alternative a single cashiers check for



the amount due and suggested to Mr. Ratzlaf that he contact his bank in Oregon to make the necessary arrangements. Allmaras also made available to the Ratzlafs a limousine and assigned employee Ron Hunt to transport them to the local bank that would provide the check.

On October 28, 1988, Hunt escorted the Ratzlafs to several banks in and near Stateline, Nevada and South Lake Tahoe, California. At each bank the Ratzlafs used cash to purchase, or attempt to purchase, cashiers checks in amounts less than $10,000. Armed with the cashiers checks thus obtained, the Ratzlafs returned to the High Sierra casino and submitted them as partial payment on their gambling debt. However, not all of the $160,000 debt

was eliminated. Accordingly, on November 28, 1988, Mr. Ratzlaf gave Ruby Langston, a former employee at a restaurant owned by the Ratzlafs, $5,000 in currency and asked her to purchase a single cashiers check at First Interstate Bank in Portland. On the same day Mr. Ratzlaf also gave Lena Koseniensky $5,000 in currency and asked her to perform a similar errand. Koseniensky did so at the same bank Langston had visited. Two days later, Mr. Ratzlaf gave George Chanouzas $7,500 in cash and asked him to buy a single cashiers check. Chanouzas also performed this transaction at the First Interstate Bank in Portland. Between November 29 and December 5, 1988, the Ratzlafs separately and together used currency to purchase five cashiers

checks, each in amounts less than $10,000, from two other Portland banks.

When asked by IRS investigators why they had paid for the cashiers checks with cash, the Ratzlafs asserted that the money was gambling proceeds and that the High Sierra casino asked them to "pay off the marker" with cashiers checks. Mrs. Ratzlaf also stated that the casino management instructed them to purchase cashiers checks in small amounts so that the casino would not be required to complete a CTR. Mr. Ratzlaf testif·ed at trial that the couple kept gambling winnings and cash revenues from their restaurant hidden in a piece of furniture in their bedroom. Allmaras denied suggesting to the Ratzlafs that they visit various banks and purchase



cashiers checks in amounts less than $10,000.

On November 20, 1990 a federal grand jury indicted the Ratzlafs and Hunt. The trio was charged with (1) conspiracy to structure and assist in structuring financial transactions for the purpose of evading reporting requirements; (2) four counts of structuring currency transactions to evade reporting requirements; and (3) interstate travel in aid of racketeering. At trial, the district judge instructed the jury as follows on the structuring charges:

> The essential elements required to be proven beyond a reasonable doubt...are as follows:
>
> First: The defendants had knowledge of a financial

institution's duty to report currency transactions in excess of $10,000;

Second: With such knowledge, the defendants knowingly and willfully structured or assisted in structuring or attempted to structure or assist in structuring a currency transaction;

Third: The purpose of the structured transaction was to evade the transaction reporting requirement;

Fourth: The structured transaction(s) involved one or more domestic financial institutions.

....

An act is done knowingly and willfully for the purpose of [31 U.S.C. §§ 5322(a), 52324(3)] if the



defendants, with knowledge of a financial institution's duty to report currency transactions in excess or $10,000, voluntarily or intentionally structured or assisted in structuring or attempted to structure or assist in structuring a currency transaction with the purpose of evading the currency reporting requirements.

The government does not have to prove that the defendants knew that structuring was unlawful[,] nor does the government have to prove that the defendants knew of the existence of the law which they are charged with breaking.... However, if a defendant did not have knowledge of a bank's duty to report currency transactions in

excess or $10,000, that may be considered a defense.

It is not a defense that the defendants did not know that "structuring" itself is [illegal] or of the existence of [31 U.S.C. §§5322(a), 5324(3)].

The jury convicted Mr. Ratzlaf on all counts and Mrs. Ratzlaf on the conspiracy and interstate travel charges.[1] Mr. Ratzlaf was sentenced to fifteen months in federal prison on each count, to run concurrently; three years supervised release; and to pay a fine of $26,300 and a special assessment of $300. Mrs. Ratzlaf was sentenced to five years probation on each count, to

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[1]Hunt was convicted on the conspiracy count, two structuring counts, and the interstate travel charge. His convictions are not at issue in this appeal.



run concurrently and to include ten months home detention, and to pay a $7,900 fine and a $100 special assessment. The defendants filed timely notices of appeal on July 10 and August 14, 1991.

II

We review de novo the question whether the jury instructions in this case misstated the elements of the crime of structuring financial transactions to avoid the currency reporting requirements. United States v. Durham, 941 F.2d 886, 890 (9th Cir. 1991). "We review a claim of error in a jury instruction by looking to 'the adequacy of the entire charge...in the context of the whole trial.'" United States v. Mundi, 892 F.2d 817, 818 (9th Cir. 1989), cert. denied, 111 S.Ct. 1072

(1991) (quoting United States v. Marabelles, 724 F.2d 1374, 1382 (9th Cir. 1984)).

III

31 U.S.C. § 5324 provides:

> No person shall for the purpose of evading the reporting requirements of section 5313(a) with respect to such transaction -
>
> ...
>
> (3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

Individuals that engage in such "structuring" activities are subject to criminal penalties, 31 U.S.C. § 5322(a) ("A person willfully violating this



subchapter or a regulation prescribed [there]under...shall be fined...or imprison[ed]...or both.") (emphasis added).[2]

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[2]The Bank Secrecy Act of 1970, 31 U.S.C. § 5313(a), and associated regulations promulgated under its authority, 31 C.F.R. § 103.22(a)(1), obligate financial institutions to report to the government currency transactions involving more than $10,000. Congress enacted this law because individuals involved in criminal activity frequently engage in sizeable cash transactions. The reports, called "Currency Transaction Reports" or "CTRs," help law enforcement officers investigate and fight a variety of criminal activity. See generally H.R. Rep. No. 975, 91st Cong. 2d Sess., reprinted in 1970 U.S.C.C.A.N. 4394, 4396; Rusch, Hue and Cry in the Counting-House: Some Observations on the Bank Secrecy Act, 37 Cath. U.L. Rev. 465, 469-73 (1988).

The Bank Secrecy Act did not apply to bank customers prior to January 1987. Before that time individuals who "structured" transactions to avoid the $10,000 reporting threshold could be prosecuted only for willfully causing a financial institution to fail to file a CTR, 18 U.S.C. § 2(b), for knowingly and willfully concealing a material fact

[1] We recently rejected an argument that an individual cannot be convicted of "structuring" unless the government proves that he or she knew such activities are illegal:

> Congress had set the reporting requirement for the banks. Congress was aware that several circuits, including ours, had held it no crime to structure deposits so that the reporting requirement would not be triggered. Congress changed the law to make it a crime so to structure with the intent to prevent reporting. To act willfully under the statute is to act with this intent....



United States v. Hoyland, 914 F.2d 1125, 1129-30 (9th Cir. 1990) (internal statutory citations omitted). In so holding, we agreed with United States v. Scanio, 900 F.2d 485 (2nd Cir. 1990). There, the Second Circuit concluded that knowledge of illegality is not required to convict for "structuring" because such conduct is "affirmative" and "demonstrate[s] an awareness of the legal framework relative to currency transactions which, it is reasonable to conclude, should...alert[] [the defendant] to the consequences of his conduct." Id. at 490 (citing United States v. Int'l Minerals & Chem. Corp., 402 U.S. 558, 564-65 (1971), and United

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from the government, 18 U.S.C. § 1001, or for conspiracy, 18 U.S.C. § 371, United States v. Scanio, 900 F.2d 485 (2d Cir. 1990). As part of the Anti-Drug Abuse Act of 1986, Congress enacted 31 U.S.C. § 5324.

States v. Fierros, 692 F.2d 1291, 1295 (9th Cir.), cert. denied, 462 U.S. 1120 (1983)). The court explained that, unlike other sections of the Bank Secrecy Act,[3] the purpose of section 5324(3) is to protect the government's right to information. To require proof that the defendant knew structuring to be illegal would be inconsistent with this goal. 900 F.2d at 491. See also United States v. 316 Units of Municipal Securities, 725 F.Supp. 172, 177-79 (S.D.N.Y. 1989) (civil forfeiture action).

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[3]Specifically, the court addressed the distinction between "willful" as used in section 5324(3) and as employed in 31 U.S.C. § 5316, which proscribes an individual's failure to file "Currency and Monetary Instrument Reports." The Scanio court explained that section 5316 "requires individuals to report otherwise innocent transactions...." 900 F.2d at 491.



[2] The Ratzlafs argue that the Supreme Court's recent decision in Cheek v. United States, 111 S.Ct. 604 (1991), overrules Hoyland and Scanio. Cheek was a criminal tax case. The defendant had been charged with willfully attempting to evade income taxes and with willfully failing to file tax returns, violations of 26 U.S.C. §§ 7201 and 7203. The Court held that willfully means the "'voluntary, intentional violation of a known legal duty.'" 111 S.Ct. at 610 (citation omitted) (applying and discussing United States v. Murdock, 290 U.S. 389, 396 (1933); United States v. Bishop, 429 U.S. 10, 12 (1976) (per curiam)).

The Court explained its holding with reference to the tax laws:

Willfulness, as construed by our prior decisions in criminal tax cases, requires the Government to prove that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty....[If] the issue is whether the defendant knew of the duty purportedly imposed by the... statute...he is accused of violating, . . . the Government [satisfies the knowledge component of the willfulness requirement if it] proves actual knowledge of the pertinent legal duty . . . .But Carrying this burden requires negating a defendant's claim of ignorance of the law....This is so



because one cannot be aware that the law imposes a duty upon him and yet be ignorant of it,...or believe that the duty does not exist.

Id. at 610-11 (emphasis added).

The Court explained that Congress employed the term "willfully" in the criminal tax laws because their "proliferation ... has sometimes made it difficult for the average citizen to know and comprehend the extend of [their] duties and obligations" under the tax laws. Id. at 609 (emphasis added). The Court noted that it had long construed "willfully" in the criminal tax statutes "as carving out an exception to the traditional rule" that "every person kn[ows] the law." Id. The Court does this, according to the

Cheek majority, because the tax laws are "complex[]." Id.

[3] Four federal courts have answered the question whether Cheek requires the government to prove a structuring defendant knew that such activity is illegal. In United States v. Dashney, 937 F.2d 532 (10th Cir.), cert. denied, 112 S.Ct. 402 (1991), the court rejected the notion that Cheek changes the Hoyland and Scanio conclusions:

> Criminal tax statutes are more analogous to...international currency reporting statutes . . ., since entirely innocent actions can lead to violations of the law. [But] Dashney's actions were anything but innocent, as he went to great lengths to avoid the



> filling out of CTRs in connection with his transactions.

Id. at 540 (internal citations omitted). See also United States v. Nall, 949 F.2d 301, 307 (10th Cir. 1991). In United States v. Rogers, 962 F.2d 342 (4th Cir. 1992), the court agreed with Dashney, holding that the Cheek exception is a narrow one. The court emphasized that Cheek's rationale is inapplicable to the structuring statute because it is not complex. Id. at 344. See also United States v. Wollman, 945 F.2d 79, 81 (4th Cir. 1991) (per curiam) (summarily affirming structuring conviction without addressing Cheek). Similarly, in United States v. Brown, 954 F.2d 1563, (11th Cir. 1992), the court refused to apply the Cheek exception to section 5324(3). "[Congress"] intent to facilitate

prosecution of money launderers, stands in direct contrast to the ... holding in Cheek that Congress intended to show special deference to Tax Code violators, [because] the tax laws [are complex]." Id. at 1569 n.2. Cf. United States v. Donovan, 1992 WL 18217, at *4, 1992 U.S. App. LEXIS 1535, *7-*9 (1st Cir. Feb. 6 1992) (rejecting argument that Cheek requires proof of knowledge that failure to report currency transactions exceeding $10,000 is illegal and declaring that "the Cheek exception is restricted to tax crimes").

The result was different in United States v. Aversa, 762 F.Supp. 441 (D.N.H. 1991). There, the defendants were convicted of structuring after one of the men, Aversa, asked his investment partner and co-defendant Mento to help



him conceal proceeds of a legal real estate transaction from his wife, with whom Aversa was engaged in a contentious divorce battle. Aversa asked Mento to allow him to deposit his portion of the real estate revenues in Mento's account and agreed to sign a letter to the IRS stating that the money deposited in Mento's account belonged to Aversa and that Aversa deposited less than $10,000 at a time to avoid arousing IRS suspicion of his income sources and level. The letter was provided to the IRS, and Aversa subsequently engaged in transactions involving less than $10,000 on several occasions.

The New Hampshire district court ruled that Aversa could not be convicted of structuring because he did not know that structuring is illegal. The court

reached this conclusion for three reasons. First, structuring can be "innocent" behavior in the sense that no concealment of illegal activity is intended or effected. 762 F.Supp. at 446. Second, the court rejected the Scanio/Hoyland definition of "willful" because it means that there would be no difference between the proscribed "willful" violations of section 5324 and non-willful violations of section 5324. Id. at 447-48. Finally, the court believed that Cheek's reasoning applied because "[w]hile § 5322(a) may not be technically a criminal tax law it is certainly a criminal law related to taxation." Id. at 447 (emphasis in original). In addition, the court was convinced that the structuring laws are just as complex as "obscure" to the



average citizen as are the tax laws. 762 F.Supp. at 447.

[4] We disagree with the Aversa court for several reasons. First, the currency structuring and reporting statutes are not "complex" in the sense that the Cheek Court used that term in referring to the Internal Revenue Code. The tax laws are "[o]ne of the most esoteric areas of the law...[,] replete with 'full-grown intricacies', [where] it is rare that a 'simple, direct statement of the law can be made without caveat.'" United States v. Regan, 937 F.2d 823, 827 (2d Cir.) (citation omitted), modified, 946, F.2d 188 (1991). The tax code's lengthy and complicated list of income sources that are and are not taxable and the conditions under which exemptions and

deductions apply are in stark contrast to the two things outlawed by the money laundering statutes: failure of a financial institution to report transactions that exceed $10,000; and attempts, successful or unsuccessful, to prevent financial institutions from making the required reports by intentionally avoiding the $10,000 threshold in banking transactions.

[5] Second, we do not think the rule of lenity applies to the money laundering statutes. Mens rea is generally required to convict a person for a crime, and where a statute does not clearly specify the mental state required for conviction, courts construe the ambiguity in favor of the defendant. See United States v. United States Gypsum Co., 438 U.S. 422, 437 (1978);



Rewis v. United States, 401 U.S. 808, 812 (1971). But the language and history of the structuring statute is not ambiguous, and even a "strict" reading of the statute supports, not undercuts, the government's proffered interpretation.[4] Compare Liparota v. United States, 471 U.S. 419, 424-25 & n.7 (1985) (noting ambiguity in statute where unclear whether "knowingly" applied to all elements of the offense).

[6] Hoyland and Scanio rest firmly upon Congress' intent in proscribing structuring. Before the enactment of section 5324(3), several courts,

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[4] Morissette v. United States, 342 U.S. 246, 261-63 (1952), casts no doubt on this proposition. There, the Court held that, as a general rule, mens rea must be assumed a requirement to convict under a statute that codifies a common law crime. Structuring, however, was not a criminal offense at common law. Hoyland, 914 F.2d at 1129.

including this one, rejected attempts to impose any criminal liability for structuring financial transactions to avoid reporting requirements.[5] In 1986, Congress decided to close this apparent loophole in the government's information gathering scheme. See Scanio, 900 F.2d at 488 (citing S. Rep. No. 433, 99th Cong., 2d Sess. 22 (1986); H.R. Rep. No. 746, 99th Cong., 2d Sess. 18-20 (1986)); Hoyland , 914 F.2d at 1129; Dashney, 937 F.2d at 537-38. When Congress effected this amendment to the money laundering and currency reporting statutes, it did not change the language of section 5322(a). In adding section

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[5]See, e.g., United States v. Varbel, 780 F.2d 758, 762 (9th Cir. 1986); United States v. Anzalone, 766 F.2d 676, 679-83 (1st Cir. 1985). But see, e.g., United States v. Taboon-Builes, 706 F.2d 1092, 1096-1101 (11thCir. 1983).



5324(3), Congress likewise did not specify that a greater "state of mind" would be required to secure a conviction under it than that established by section 5322. Thus, after the 1986 amendments, one could be prosecuted for violating section 5324(3) if he or she "willfully" structured transactions.[6]

The legislative history of the Anti-Drug Abuse Act clearly indicates that this interpretation of Congressional intent is correct:

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[6]Congress' decision to add section 5324(3) to the United States Code also did not modify the traditional meaning of "willfulness," viz., the defendant intended to do the act with which he is charged. See Scanio, 900 F.2d at 489 ("A requirement that the conduct be willful generally means no more than that the person charged with the duty knows what he is doing. It does not mean that, in addition, he must suppose he is breaking the law.") (quoting American Surety Co. v. Sullivan, 7 F.2d 605, 606 (2d Cir. 1925) (L.Hand, J.)).

> [A] person who converts $18,000 in currency to cashiers checks by purchasing two $9,000 cashier's checks at two different banks or on two different days with the specific intent that the participating bank or bans not be required to file [CTRs] for those transactions, would be subject to potential civil and criminal liability. A person conducting the same transactions for any other reasons...would not be subject to liability under the proposed amendment.

S. Rep. No. 433, 99th Cong., 2d Sess. 22 (1986) (quoted in Dashney, 937 F.2d at 538).[7]

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[7]There is little indication that this interpretation of section 5324(3)'s history and purpose is incorrect. One



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report on the Anti-Drug Abuse Act included a proposal to change "willfully" in section 5322 to "knowingly." H.R. Rep. No. 855, 99th Cong., 2d Sess. 7, 27 (1986) (Report of House Judiciary Committee). The report noted that the term "willfully" has been ascribed different meanings in different statutory contexts and explained that its meaning in the money laundering statute was an "actual awareness of the reporting requirement...." Id. at 21-22. The Judiciary Committee Report recommended a change to the word "knowingly," explaining that this change would not be intended to change the meaning of the statute. Id. The House Committee on Banking, Finance and Urban Affairs issued a report similar to that of the Judiciary Committee. H.R. Rep. No. 746, 99th Cong., 2d Sess. 29 (1986). It stated that "[i]n the criminal context the term "knowingly" means with specific intent to commit a violation of the...Act" or "specific intent to commit a crime." Id. at 41. The report also suggested a change to the term "knowingly."

We agree with the Tenth Circuit that these committee reports are not helpful. First, the legislation discussed in the Judiciary Committee Report did not contain any prohibition of structuring. Dashney, 937 F.2d at 537 n.5. That means the Committee was not contemplating the appropriate state of mind when it was considering

[7] The Aversa court's premise - that a defendant must know of the reporting requirements to be convicted of structuring - is therefore correct, but does not support the holding of that case. I a defendant knows that the bank must report a currency transaction and then intentionally acts in a way to prevent that, he has acted "willfully." One does not act "willfully" under section 5322 unless both parts of this equation are present. See Dashney, 937 F.2d at 539. There is no danger that someone who does not know of the reporting requirements could be

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structuring. Second, the reports were submitted with bills rejected by Congress. Thus, although Congress did ultimately make changes in the money laundering laws, "it is [not] reasonable to assume that [Congress] adopted the intent of the[se] committee[s]," Sutherland's Statutory Construction § 48.06, at 332 (5th ed).



convicted under that mens rea standard; nor is there any way that one who knows of the reporting requirements but who does not intend to prevent such reporting can be convicted of structuring. No one can be convicted of "violating" section 5324(3) unless he or she knows of the reporting requirements and that he or she is doing something to prevent such reporting.

Finally, this case presents little risk that persons who engaged in "innocent" actions stand unjustly convicted of structuring. The Ratzlafs were aware of the reporting requirements, and the evidence indicates that the Ratzlafs apparently were seeking to avoid payment of their income taxes. The couple took no steps to insure that the IRS would be aware of

the assets used to purchase the cashiers checks; denied that they earned money from gambling when in fact they had done so; denied any failure to report gambling income; and apparently hid large amounts of currency in or near their home. The Ratzlafs cannot be compared to an individual involved in perfectly ordinary business transactions who unconsciously breaks the currency laws. Compare Aversa, 762 F.Supp. at 446.

IV

Cheek did not overrule Hoyland. We join the Fourth, Tenth, and Eleventh Circuits in reaching this holding. Accordingly, the instructions given by the district court were not improper. The defendants' convictions are therefore AFFIRMED.